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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,275	01/30/2001	Aaron Strand	8362-CIP-DIV	2989

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EXAMINER

PASCUA, JES F

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/774,275	Applicant(s) STRAND ET AL.	
	Examiner Jes F. Pascua	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 75-116 and 138-153 is/are pending in the application.
- 4a) Of the above claim(s) 79,80,99,100,116 and 144 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 75-78,81-98,101-115 and 138-153 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/14/04 has been entered.

Election/Restrictions

2. Amended claim 116 does not require the two areas of structural weakness of the elected embodiment. New claim 144 recites a peel seal, which is directed to a non-elected embodiment. Therefore, claims 116 and 144 have been withdrawn from consideration.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the areas of structural weakness nonlinearly extending across a width dimension or a length dimension (claims 86-88 and 106-108), the areas of structural weakness comprising a hermetic seal (claim 142) and the tear tape structure coupled to the web material adjacent to at least one

area of structural weakness (claim 150) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. Applicant is advised that should claims 75-78 and 81-95 be found allowable, claims 96-98 and 101-115 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it

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is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 86-88 and 106-108 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to provide an adequate written description of the areas of structural weakness nonlinearly extending across a width dimension or a length dimension.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 75-77, 81-85, 89, 90, 96, 97, 101-105, 109, 110, 138-141, 143, 145, 147 and 152 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611 (both previously cited).

Lingenfelter discloses the claimed device except for each of the front and rear panels 19, 21 having an area of structural weakness. Plourde '611 discloses that it is known in the art to provide an area of structural weakness 40 in the front and rear panels of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the front and rear panels of Lingenfelter with the areas of structural weakness of Plourde '611, in order to provide a wider access opening to the interior of the bag.

9. Claims 78 and 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611.

Lingenfelter and Plourde '611 disclose the claimed invention, as discussed above, except for the skirt web material being coupled to the reclosable fastener structure instead of being integral therewith. It would have been obvious to one having ordinary skill in the art at the time the invention was made to couple the skirt web material to the reclosable fastener structure in Lingenfelter, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

10. Claims 86-88 and 106-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611.

Lingenfelter and Plourde '611 disclose the claimed invention, as discussed above, except for the areas of structural weakness nonlinearly extending across a width dimension or a length dimension. It would have been an obvious matter of design choice to make the areas of structural weakness of Plourde '611 extends nonlinearly across a width dimension or a length dimension. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

11. Claims 91, 92, 111, 112, 148 and 149 rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611.

Lingenfelter and Plourde '611 disclose the claimed invention except for the areas of structural weakness comprising microperforations or scoring instead of perforations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the perforations of Plourde '611 with microperforations or scoring since the Examiner takes Official Notice of the equivalence of perforations and microperforations or scoring for their use in the bag art and the selection of any of these known equivalents to facilitate the tearing of bag material would be within the level of ordinary skill in the art.

12. Claims 93-95, 113-115 and 146 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611 as applied to claims 75, 96 and 138, and in further view of Peppiatt '143.

Lingenfelter and Plourde '611 disclose the claimed invention, as discussed above, except for the material forming the bag comprising a laminate film. Peppiatt '143 teaches that it is known in the art form an analogous bag from a multiple laminate film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use multiple laminate film to form the bag of Lingenfelter, taught to be desirable by Peppiatt '143, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

13. Claim 142 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611.

Lingenfelter and Plourde '611 disclose the claimed invention except for areas of structural weakness comprising a hermetic seal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to hermetically seal the areas of structural weakness in Plourde '611 since it was known in the art that hermetically sealed areas of structural weakness in bags prevents spoiling of the bag contents while facilitating the initial opening of the bag.

14. Claim 150 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611.

Lingenfelter and Plourde '611 disclose the claimed invention except for at least one area of structural weakness having at least one tear tape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least one structural area of weakness of Plourde '611 with a tear tape since it was known in the art that tear tapes facilitate the tearing of a bag along the area of structural weakness.

15. Claim 151 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611.

Lingenfelter and Plourde '611 disclose the claimed invention except for the opposite ends of the areas of structural weakness having notches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide notches at opposite ends of the areas of structural weakness in Plourde '611 since it was known in the art that notches at opposite ends of the areas of structural weakness facilitate the initiation of tearing along the areas of structural weakness.

16. Claim 153 rejected under 35 U.S.C. 103(a) as being unpatentable over Lingenfelter and Plourde '611.

Lingenfelter and Plourde '611 disclose the claimed invention except for the reclosable fastener having slider. It would have been obvious to one having ordinary

skill in the art at the time the invention was made to provide the reclosable fastener of Lingenfelter with a slider since it was known in the art that sliders facilitate the opening and closing of reclosable fasteners.


Response to Arguments

17. Applicant's arguments with respect to claims 75-78, 81-98, 101-115, 138-143 and 145-153 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jes F. Pascua
Primary Examiner
Art Unit 3727